compel payments to be made on their claims in preference to others. Especially have directors, whether creditors or not, no right to enter into any scheme for a collusive sale and sacrifice of their company's property. And all their proceedings as parties to any combination or "ring" for such purposes, will be set aside in equity.

ADELBERT HAMILTON.

Chicago.

Circuit Court, Eastern District of Pennsylvania.

HUBBELL v. DREXEL.

The pledgee of shares of stock, in the absence of a specific agreement to the contrary, is entitled to have the shares transferred to his own name on the books of the company, and where such transfer is made he is not bound to retain the identical shares pledged, so long as he keeps on hand an equal number of similar shares to answer the pledgor's demand on repayment of the loan.

A share of stock is without ear-marks, and undistinguishable from the other shares of the same corporation and issue, the certificates bearing dates and numbers, being but evidence of title.

BILL in equity filed in December 1880, by W. W. Hubbell against Drexel & Co, to compel the transfer to the plaintiff of 1702 shares of Pennsylvania Railroad stock.

The case was heard upon bill, answer and proofs, from which it appeared that at different times between March 14th and July 17th 1877, plaintiff had deposited with defendants various shares of Pennsylvania Railroad stock as collateral security for loans; that on said date a settlement was had by which it appeared that the number of plaintiff's shares so held by defendants was 1602; that on the same day plaintiff executed to defendants a demand note for the amount of the loans, with condition that upon default the holder might sell the collaterals without further notice, at public or private sale.

It also appeared that shortly after the settlement of July 17th 1877, the market-value of the stock having declined, the defendants called upon the plaintiff for additional margin, and he being unable to furnish it, the defendants, with his consent, sold 600 shares out of the collateral they held. The stock left by the plaintiff with the defendants as collateral was immediately thereafter transferred into their name, and new certificates issued to them.

In September 1877, it appeared from the testimony that these particular certificates were transferred out of the name of Drexel

& Co. into that of sundry other parties; but by the evidence offered by the defendants, it appeared that this transfer was made simply for convenience in the deliveries, and that the defendants always had on hand a much greater number of shares, out of which they could have returned to Mr. Hubbell his shares upon the repayment of his loan.

In April 1878, the defendants having notified the plaintiff to pay his note, upon his default, after due notice, sold the remaining shares at public auction at an average price of 28½. After crediting the plaintiff with the proceeds of this sale, there remained an indebtedness due the defendants of $1600.

Plaintiff alleged that in the settlement of July 17th, defendants had failed to account for 100 of the shares, and that defendants had agreed not to enforce the condition of the note, but to carry the stock for plaintiff. Plaintiff further charged that the transfer of the stock by defendants to their own names before default, and their failure to retain in their possession the identical shares pledged was a fraud on plaintiff's rights.

W. W. Hubbell, for plaintiff.

Samuel Dickson, for defendants.

The opinion of the court was delivered by

BUTLER, J.—(After discussing the questions of fact as to the error in the settlement and the agreement to carry the stock, and deciding them in favor of defendants.) The allegation that the defendants procured a transfer of part of the stock to themselves, on the books of the company, immediately on receiving the certificates from him, is immaterial. It was plainly their right to do so. If he desired to avoid this he should have contracted accordingly. When thus transferred, it was unnecessary and impossible to distinguish between these shares and others held by the defendants. It is of no consequence, therefore, that in selling stock they may have disposed of these particular shares. They at all times had in hand an amount greatly in excess of the shares received from the plaintiff, and were therefore constantly prepared to keep their contract with him. A share of stock is without "ear-marks," and cannot therefore be distinguished, as has just been said, from others of the same corporation and issue. The certificates, bearing dates and numbers, are but evidence of title. On payment of his

debt the plaintiff would have been entitled to a return of the number of shares which the defendants had received—nothing more. Such was the effect of his contract: *Nourse* v. *Prime*, 4 Johns. Ch. Rep. 490; *Allen* v. *Dykers*, 3 Hill 593; *Gilpin* v. *Howell*, 5 Barr 41.

For these reasons the bill must be dismissed, with costs.

McKennan, J., concurred.

A question of considerable practical importance was decided in the principal case, namely: that the pledgee of shares of stock, in the absence of a specific agreement to the contrary, may transfer the stock to his own name on the books of the company, and when so transferred, the particular shares become undistinguishable from the common mass, and the pledger is not entitled to the return of the identical shares pledged.

This decision was grounded upon the fact that shares of stock are without any ear-mark, and consequently cannot be distinguished from other like shares of the same corporation; it being of no consequence that each certificate may have a different date or number, since the certificate is only the evidence of title.

The decision, which is no doubt perfectly correct, was probably based upon the remarks of Bell, J., in *Gilpin* v. *Howell*, 5 Penn. St. 41. In that case the judge in the court below charged the jury, that the plaintiff could recover, if the defendants, the holders of stock of the Girard Bank as collateral security from the plaintiff, had either parted with the Girard Bank stock pledged to them or thrown it undistinguished into the general mass of their own stock, or that of other persons in their custody, so as to be unable to discriminate the identical shares of stock originally purchased for the plaintiff. "It is, in general, true," said Bell, J., on appeal, "that where the pledge is distinctive in its character, and therefore capable of being recognised among other things of a like nature, or where a mark is set upon it with a view to its discrimination, the pledgee is bound to redeliver the identical article pledged, and cannot substitute something of a like kind unless so authorized by the contract. But I think there is a manifest difference *ex necessitate*, where the thing pledged, from its very nature, is incapable, in itself, of identification, if once mingled with other things of the same kind. In such case, it is the duty of the pledger to put a mark upon it by which it may be distinguished; for, as is said in *Nourse* v. *Prime et al.*, 4 Johns. Ch. 490, if a person will suffer his property to go into a common mass without making some provision for its identification, he has no right to ask more than that the quantity he put in should always be there and ready for him. By a just fiction of law, that *residuum* shall be presumed to be the portion he put in. The good sense of these remarks made in immediate reference to a pledge of shares of bank stock, recommend them to our adoption. They are repeated by Chancellor Kent in the s. c., reported in 7 Johns. Ch. 69, and noticed with approbation by Nelson, C. J., in *Allen* v. *Dykers*, 3 Hill (N. Y.) 593. Speaking of *Nourse* v. *Prime*, he says, 'as it appeared the defendants always had on hand the requisite quantity of shares, the law will presume the shares so on hand, from time to time, were the shares deposited, because the parties have not reduced the shares to any more certainty.' It may be, that even in a pledge of stock which frequently passes from hand to hand with almost as little ear-mark as money itself,

the pledger may identify and stipulate for a return of the very same stock, by handing his certificate to the pledgee with a blank power to transfer, not to be used except on a failure to redeem or in some other mode devised for the same purpose. But where, as here, the shares pledged never stood in the name of the pledger, but passed at once from the former owner to the pledgee, without anything done by the former to set them apart from other like shares of the latter or even a request to this effect, it is not perceived how, with any show of reason, it can be made the subject of complaint, that the pledge necessarily was mingled with the other similar stock of the pawnee. * * * As already intimated, under the circumstances of this case, nothing further was incumbent on the defendants than to have at all times under their control the requisite number of shares ready to be transferred to the plaintiff when legally demanded, unless, indeed, it was the agreement and understanding of the parties, that the defendants, until the money borrowed was repaid, should deal with the pledged stock as if it was their own. In such case it would be within the power of the pledgees to sell or otherwise dispose of it pending the loan."

In *Neiler* v. *Kelley*, 69 Penn. St. 409, in an action of trover by the pledger of stock to recover for a wrongful conversion by the pledgees in selling the same without notice to the pledger, the debt being due and unpaid, SHARSWOOD, J., said: "The defendants below were at no time under any obligation to deliver these stocks and bonds specifically to the plaintiff. He never had put himself in a position to demand them before the bringing the suit, or up to the time of trial, by tendering or offering to pay the amount of his indebtedness to the defendants. Had the action been detinue or replevin, he must have failed entirely. * * * Where a plaintiff seeks to fasten a responsibility for more than the usual measure of damages, he must also fasten upon the defendants the duty or obligation to deliver *specifically* the stock or securities at some particular time, and their refusal to fulfil that duty. *Non constat*, that upon a demand and tender, the defendants would not have been able to deliver to the plaintiff similar stocks and securities, as, according to *Gilpin* v. *Howell*," *supra*.

In Nevada in *Boylan* v. *Huguet*, 8 Nev. 345, the same rule was laid down, the court holding that, in the ordinary transactions between principals and brokers, the former were not entitled to receive the identical shares purchased on their account by the brokers, and that the brokers were acting within the terms of their contracts with their principals, so long as they were ready to deliver, on demand and payment, certificates representing the requisite number of shares. WHITMAN, J., said: "So long as he (the broker) held a certificate or certificates representing the requisite number of shares and was prepared to deliver them, on payment and demand, so long was he within the terms of his contract; and though he might have used and reused the identical certificates received on filling Boylan's (the principal's) orders, mixed them with others, destroyed them even, there was no conversion until he, or as in this case, his voluntary assignees, refused to deliver upon demand." See also the charge of the court in the case of *Fay* v. *Gray*, 124 Mass. 500.

The American authorities thus seem to be harmonious. There is a case, however. decided in England which, at the first blush, might seem to be authority for a different rule.

In *Langton* v. *Waite*, L. R., 6 Eq. C. 165, A. & B., stockbrokers, bor rowed, on behalf of the plaintiff, a sum of money for a term of three months from the defendants, also stockbrokers, upon the security of certain shares of stock, which were transferred to the

name of one of the defendant's firm. Before the end of the term, the plaintiff, having contracted to sell the stock, applied to the defendants for a retransfer of it, tendering the amount of the debt in full with interest. The defendants, having sold the stock, refused to return it or *similar shares*, alleging that the loan was made for the full term, and the plaintiff in consequence of the refusal of the defendants, was obliged to go into the market and buy other shares, at a loss to himself, to complete his contract of sale. At the expiration of the term, the defendants, having bought other similar shares at a lower figure, tendered the amount of the security to the plaintiff. A rule of the Stock Exchange to the effect that "in all cases of loans on the deposit of security, the lender is bound to return the identical securities deposited, unless it be otherwise stipulated at the time of making the loan; but this liability does not apply to a member who has taken in stock or shares upon continuation at the market price," was offered in evidence in an action by the plaintiff to recover the amount of profit realized by the defendants from the use they had made of his stock; and the court held that the rule was conclusive on the subject; that the pledgee was bound to return the identical shares pledged, and that, the sale of the pledge being a wrongful conversion, the plaintiff was entitled to recover. The court added that an alleged custom for a pledgee to sell pledged stock being in direct opposition to the express rule was bad, and also observed that the pledgee had no right by the common law to sell the stock pledged, citing *Ex parte Dennison*, 3 Vesey 552.

In reading this case carefully, it will be observed that it went off on the fact of there being an express rule of the Stock Exchange on the subjects forbidding re-hypothecation, and that a custom of the Stock Exchange to the contrary could not prevail. And besides the case, according to the principle of the American cases, must have been decided in the plaintiff's favor, as evidently the pledgees did not keep on hand a sufficient number of shares to satisfy the amount of security deposited, on demand and payment of the loan. So that notwithstanding the remarks of MALINS, V. C., which were not necessary to the decision of the question, this decision cannot be taken to militate against the rule laid down in the principal case or in those we have adverted to.

It will be seen in the foregoing cases that the shares were actually transferred to the pledgee. Suppose, however, the pledger merely handed the certificates to the pledgee with a power of attorney in blank to transfer, and the pledgee did not have them transferred to his own name, would the pledger be entitled to the identical certificates he had pledged on demand and tender of payment? This is a question that is perhaps scarcely worth while to do more than suggest, as the damage, like shares being equal in value, would be not material, the pledger having suffered none by a return of other like shares.

If the pledgee of stock, always keeping sufficient amount on hand to satisfy the pledges may sell the shares pledged to him, he certainly can pledge them, though in the state of Pennsylvania there is a statute against all hypothecation of stock by the pledgee, which makes it a penal offence; see Act of May 25th 1878 (P. L. 155), somewhat modified by the supplement passed on June 10th 1881 (P. L. 1881, 107), excepting from the operation of the Act of 1878, the hypothecation of stock not fully paid for, and carried by the broker.

A somewhat kindred question of considerable interest is also suggested by the points raised in the principal case as well as by the late case of *Cherry* v. *Frost*, 21 Am. Law Reg. (N. S.) 57, and the interesting note to that case.

The annotator of that case considered

"the position of the sub-pawnee * * * without notice, of a non-negotiable security," and it is our intention to go a step further and consider the two broad propositions, viz.: *first*, whether a party, who has deposited an article for the security of a debt, can, on the pawnee re-hypothecating the same, treat the original contract of pawn at an end, so as to bring an action of detinue or trover against the sub-pawnee without tendering the amount of the original debt for which the security was given, and

Secondly, if such re-hypothecation does not terminate the contract of pawn, whether a party, with whom an article has been left as a security for the payment of money, has a right to transfer his interest in the thing pledged (subject to the right of redemption in the pawner) to a third party.

It must be borne in mind, as was remarked in the late case of *Donald* v. *Suckling*, L. R., 1 Q. B. 618, that we are not dealing with the case of a lien, which is merely the right to retain possession of the chattel, and which right is immediately lost on the possession being parted with, unless to a person who may be considered as the agent of the party having the lien for the purpose of its custody. There is a great difference in this respect between a pledge and a lien. The authorities are clear that a right of lien, properly so called, is a mere personal right of detention, and that an unauthorized transfer of the thing does not transfer that personal right. The cases which established in England before the Factor's Acts, that a pledge by a factor gave his pledgee no right to retain the goods even to the extent to which the factor was in advance, proceed on this ground.

In *Daubigny* v. *Duval*, 5 Term Rep. 606, BULLER, J., proceeded on the ground that "a lien is a personal right and cannot be transferred to another."

In *Legg* v. *Evans*, 6 M. & W. 36, where an action of trover was brought against a sheriff of Middlesex, to recover some pictures, who justified under an execution, the plaintiff replied by setting up a lien on the goods, which was held good on demurrer. PARKE, B., said: "If we consider the nature of a lien and the right which it confers, it will be evident that it cannot form the subject-matter of a sale. A lien is a personal right which cannot be parted with, and continues only so long as the possessor holds the goods. It is clear, therefore, that the sheriff cannot sell an interest of this description which is a personal interest in the goods." And in *McCombie* v. *Davies*, 7 East 6, Lord ELLENBOROUGH remarked that "nothing could be clearer than that liens were personal and could not be transferred to third persons by any tortious pledge of the principal's goods."

In *Coggs* v. *Bernard*, 2 Ld. Raym. 916, Lord HOLT is reported to have said that a "pawnee has a special property, for the pawn is a securing to the pawnee that he shall be repaid his debt, and to compel the pawnor to pay him." And again in *Mores* v. *Conham*, Owen 123, the court used language to the same effect, saying, that the pawnor "hath such interest in the pawn as he may assign over, and the assignee shall be subject to detinue if he detains it upon payment of the money by the owner.

In *Donald* v. *Suckling*, *supra*, the majority of the court relied principally on the case of *Johnson* v. *Stear*, 15 C. B. (N. S.) 330. There, one Cumming, a bankrupt, had deposited with the defendant two hundred and forty-three cases of brandy, to be held by him as a security for the payment of an acceptance of the bankrupt, discounted by the defendant, and which would become due on January 29th. and in the event of such acceptance not being paid at maturity, he was to be at liberty to sell the brandy and apply the proceeds to the payment of the acceptance. On January 28th, the defendant contracted to sell the

brandy to a third party and delivered him the dock-warrant on the 29th, and on the 30th the third party got possession. An action of trover was brought by the assignee of the bankrupt, and the majority of the court held (ERLE, C. J., BYLES and KEATING, JJ.; WILLIAMS, J., *dissentiente*), that the plaintiff was only entitled to nominal damages, because "the deposit of the goods in question with the defendant to secure repayment of a loan on a given day, with a power to sell in case of default on that day, created an interest and a right of property in the goods which was more than a mere lien; and the wrongful act of the pawnee did not annihilate the contract between the parties, nor the interest of the pawnee in the goods under the contract."

In *Donald* v. *Suckling*, *supra*, it was held by the court (MELLOR and BLACKBURN, JJ., and COCKBURN, C. J.; SHEE, J., *dissentiente*,) that, where debentures had been deposited as security for the payment of a bill of exchange, with a right on the part of the depositor to dispose of them on the non-payment of the bill when due, and the pawnee re-hypothecated them to a third party for a valuable consideration, the original pawnor, while the bill was still unpaid, could not maintain an action of detinue against the latter for the recovery of the debentures, without first tendering him the amount of the bill. In the course of his opinion, BLACKBURN, J., said: "Story, in his treatise on Bailments, sect. 327, says, 'But whatever doubt may be indulged as to the case of a factor, it has been decided, that is, in America, that in case of a strict pledge, if the pledgee transfers the same to his own creditors, the latter may hold the pledge until the debt of the original owner is discharged.' In Whitaker on Liens, published in 1812, p. 140, the law is laid down to be that the pawnee has a special property beyond a lien. I do not cite this as an authority of great weight, but as showing that this was an existing opinion in England before Story wrote his treatise. * * * Now, I think that the subpledging of goods held in security for money, before the money is due, is not in general so inconsistent with the contract as to amount to a renunciation of that contract. There may be cases in which the pledger has a special, personal confidence in the pawnee, and, therefore, stipulates that the pledge shall be kept by him alone; but no such terms are stated here, and I do not think that any such term is implied by law. In general, all that the pledger requires is the personal contract of the pledgee that, in bringing the money the pawn shall be given up to him, and that in the meantime the pledgee shall be responsible for due care being taken for its safe custody. This may very well be done though there has been a sub-pledge."

There are not many American decisions on this question, because, as is pointed out by the annotator to *Cherry* v. *Frost*, 21 Am. Law Reg. 66, the cases that have arisen in respect to the re-hypothecation of securities have gone off on the question of estoppel, as for instance, *McNeil* v. *Tenth National Bank*, 46 N. Y. 325; *Jarvis* v. *Rogers*, 13 Mass. 105; *Wood's Appeal*, 8 Weekly Notes Cases (Phila.) 441; but in *Talty* v. *Freedman's Savings and Trust Co.*, 3 Otto (U. S.) 321, SWAYNE, J., approved the ruling in *Donald* v. *Suckling*, *supra*.

In *Thompson* v. *Patrick*, 4 Watts (Pa.) 414, however, the court said, "The principles of the present action have long been settled, in *Mores* v. *Conham*, Owen 123; *Anon.*, 2 Salk. 522, and *Coggs* v. *Bernard*, 3 Salk. 268. As a pawnee has a special property in the thing pawned, he may assign it; and his assignee may consequently assert his title to it against the owner, or one standing in his place. He may even use the pawn, provided

it be not the worse for it, if the keeping of it be a charge to him * * * ."

In *Bank* v. *Trenholm*, 12 Heisk. (Tenn.) 520, an action of trover was held to lie against a factor, as pledgee, or against his sub-pledgee, without notice, though he pledged but up to his lien.

In *First Nat. Bank of Louisville* v. *Bryce*, 19 Am. Law Reg. (N. S.) 503, it was held that a re-pledge of goods by a factor terminates the contract of pledge, though the sub-pledgee has a right of set-off against the original pledgor. The court here considered the position of a factor who had made advances and that of a pledgee analogous.

In considering the point involved in the second question of our note, namely, conceding the contract of pledge is not terminated on the original pawnee re-hypothecating the article pawned, is it such a breach of the contract of pawn, as to enable the original pawnor to bring an action for damages against the original pawnee therefor.

Thompson v. *Patrick*, *supra*, was an action of trover by the sub-pawnee, to recover possession of a set of harness loaned him by the pawnee, against one Thompson, the original pawnee's agent, who had surreptitiously obtained possession of it; and it was held that, though the use of the harness by the sub-pawnee might have deteriorated the value of it, yet Thompson "could not retain the possession of it, surreptitiously obtained, against the pawnee or the plaintiff in his stead." The court said the pawnee may use the pawn, but at his peril. "But though he use it even tortiously, he is answerable for the consequences but by action. It has not indeed been expressly ruled that an improper use of it does not work a forfeiture of his lien; but neither is there any determination to the contrary, and the reason as well as the justice of the thing, is strong to show that he ought not to lose his security for a substantial debt by having caused perhaps an inconsiderable damage, for which there is an independent remedy graduated to the exact measure of it."

In *Donald* v. *Suckling*, *supra*, the point under consideration was not decided. BLACKBURN, J., said, that in England there *were strong authorities* to the effect that the contract of pledge, when perfected by delivery of possession, created an interest in the pledgee that might be assigned. MELLOR, J., said, "I think that, when the true distinction between the case of a deposit by way of pledge of goods for securing the payment of money and all cases of *lien*, correctly so described, is considered, it will be seen that in the former there is no implication, in general, of a contract by the pledgee to retain the personal possession of the goods deposited; and I think that, although he (the pawnee) cannot confer upon any third person a better title or a greater interest than he possesses; yet if, nevertheless, he does pledge the goods to a third person for a greater interest than he possesses, such an act does not annihilate the contract of pledge between himself and the pawnor; but that the transaction is simply inoperative as against the original pawnor, who, upon tender of the debt secured, immediately becomes entitled to the possession of the goods, and can recover in an action for any special damage which he may have sustained by reason of the act of the pawnee in re-pledging the goods."

COCKBURN, C. J., however, remarked, "I think it unnecessary to the decision in the present case, to determine whether a party, with whom an article has been pledged as a security for the payment of money, has a right to transfer his interest in the thing pledged (subject to the right of redemption in the pawnor) to a third party. I should certainly hesitate to lay down the affirmative of that proposition. Such a right in the pawnee seems quite incon-

sistent with the undoubted right of the pledgor to have the thing pledged returned to him immediately on the tender of the amount for which the pledge was given. In some instances it may well be inferred from the nature of the thing pledged—as in the case of a valuable work of art—that the pawnor, though perfectly willing that the article should be entrusted to the custody of the pawnee, would not have parted with it on the terms that it should be passed on to others, and committed to the custody of strangers. * * * I am of opinion that the transfer of the pledge does not put an end to the contract, but amounts only to a breach of contract, upon which the owner may bring an action; for nominal damage if he has sustained no substantial damage; for substantial damages, if the thing pledged is damaged in the hands of the third party, or the owner is prejudiced by delay in not having the thing delivered to him on tendering the amount for which it was pledged."

In the late case of *Halliday* v. *Holgate*, L. R., 3 Exch. 299, A. deposited certificates of scrip with the defendant as security for a loan, and, on his becoming bankrupt, the defendant sold the scrip without demand or notice, to repay himself the debt. The creditor's assignee, without making a tender of the debt, brought an action of trover against the defendant, and the court held, that the action would not lie. WILLES, J., said, "It has been argued that the plaintiff is at any rate entitled to nominal damages, for that a conversion was committed by the sale of the certificates. That sale, it is contended, had the effect of putting an end to the bailment of pledge; the property of the pledgee was thereby determined, so as to enable the assignee to say that, at the moment when the sale took place, he became entitled to the certificates by virtue of the general property which was then revested in him. This reasoning proceeds upon a somewhat subtle and narrow ground, for it is admitted that the assignee could claim only nominal damages. But we cannot arrive at the conclusion that he is so entitled without getting rid of the case of *Donald* v. *Suckling*," *supra*. * * * "There are three kinds of security: the first, a simple lien; the second, a mortgage passing the property out and out; the third, a security intermediate between a lien and a mortgage, viz., a pledge, where, by the contract, a deposit of goods is made a security for a debt, and the right to the property vests in the pledgee so far as is necessary to secure the debt. It is true, the pledgor has such a property in the article pledged as he can convey to a third person, but he has no right to the goods without paying off the debt, and until the debt is paid off the pledgee has the whole present interest. If he deals with it in a manner other than is allowed by law for the payment of his debt, then, in so far as by disposing of the reversionary interest of the pledgor, he causes to the pledgor any difficulty in obtaining possession of the pledge on payment of the sum due, and thereby does him any real damage, he commits a legal wrong against the pledgor. But it is a contradiction in fact, and would be to call a thing that which it is not, to say that the pledgee consents, by his act, to revest in the pledgor the immediate interest or right in the pledge, which, by the bargain, is out of the pledgor and in the pledgee. Therefore, for any such wrong, an action of trover or of detinue, each of which assumes an immediate right to possession in the plaintiff is not maintainable, for that right clearly is not in the plaintiff."

A consideration of the foregoing cases seems to show that, in England at least, a sub-pledge of the article pledged, does not terminate the contract of pledge so that an action of detinue or trover would lie by the pawnor against the

pawnee, or his assignee, without first tendering the amount of the debt which the pledge was given to secure. At the same time it is difficult to find an authority to the effect that a sub-pledge is legal.

It is true that the English authorities have held that, without a tender of the amount of the debt, an action of detinue or trover would not lie against the pawnee or his assignee, but that was because of certain technical reasons; and *Donald* v. *Suckling*, *supra*, and *Halliday* v. *Holgate*, *supra*, are not authorities for the proposition that it is not a breach of the contract of pawn, for the pawnee to re-hypothecate the article pledged.

In some of the United States the technical English rule has not been followed, and in *Work* v. *Bennett*, 70 Penn. St. 484, an action of trover was successfully brought to recover damages for an alleged illegal conversion by a sub-pledge of the article pawned, and sale by the sub-pledgee without a tender of the amount of the debt. SHARSWOOD, J., said: "Had the stock and bonds (the pledge) which were the subject of this action of trover, remained unconverted in the hands of the defendants, the plaintiff could not have recovered without a tender of the amount of the debt for which they were then pledged, or proof of payment of such debt. But they had wrongfully converted them by pledging them for their own debt, and a sale afterwards by their pledgees, without notice to the plaintiff. This dispensed with any tender before suit brought. * * * " Here a recoupment for the balance due defendant from the damages for the conversion was allowed. Apparently the case of *Thompson* v. *Patrick*, 4 Watts 414, was not cited on the argument, nor considered by the court.

In New York, Tennessee and Kentucky the courts also seem to consider re-hypothecation by the pawnee as illegal; see *Bank* v. *Trenholm*, 12 Heisk. (Tenn.) 520; *Allen* v. *Dykers et al.*, 3 Hill (N. Y.) 593; *Bank* v. *Bryce*, *supra;* but see, *Wood* v. *Hayes et al.*, 15 Gray (Mass.) 375; *Fay* v. *Gray*, 124 Mass. 500, and *Thompson* v. *Patrick*, *supra*.

ARTHUR BIDDLE.

Supreme Court of Indiana.

CHATARD v. O'DONOVAN.

Where a Catholic priest is subject to be removed at the pleasure of the bishop having charge over him, he is not entitled to a notice to quit the parsonage of the parish over which he had charge, under a statute requiring a notice from landlord to tenant.

The relationship, in such case, of the priest and bishop, is that of master and servant, and not that of landlord and tenant.

The right of occupancy of the parsonage by the priest, in such case, is only incidental to his charge over the parish, and when he is deprived of the latter the former is gone.

APPEAL from the Hendricks Circuit Court.

This was an action by appellant to recover of the appellee the possession of certain real estate. The complaint set forth that, on